

THEODORE J. BOUTROUS JR., SBN 132099
 tboutrous@gibsondunn.com
 RICHARD J. DOREN, SBN 124666
 rdoren@gibsondunn.com
 DANIEL G. SWANSON, SBN 116556
 dswanson@gibsondunn.com
 JAY P. SRINIVASAN, SBN 181471
 jsrinivasan@gibsondunn.com
 GIBSON, DUNN & CRUTCHER LLP
 333 South Grand Avenue
 Los Angeles, CA 90071
 Telephone: 213.229.7000
 Facsimile: 213.229.7520
 VERONICA S. MOYÉ (Texas Bar No.
 24000092; *pro hac vice*)
 vmoye@gibsondunn.com
 GIBSON, DUNN & CRUTCHER LLP
 2100 McKinney Avenue, Suite 1100
 Dallas, TX 75201
 Telephone: 214.698.3100
 Facsimile: 214.571.2900

MARK A. PERRY, SBN 212532
 mperry@gibsondunn.com
 CYNTHIA E. RICHMAN (D.C. Bar No.
 492089; *pro hac vice*)
 crichman@gibsondunn.com
 GIBSON, DUNN & CRUTCHER LLP
 1050 Connecticut Avenue, N.W.
 Washington, DC 20036
 Telephone: 202.955.8500
 Facsimile: 202.467.0539
 ETHAN DETTMER, SBN 196046
 edettmer@gibsondunn.com
 ELI M. LAZARUS, SBN 284082
 elazarus@gibsondunn.com
 GIBSON, DUNN & CRUTCHER LLP
 555 Mission Street
 San Francisco, CA 94105
 Telephone: 415.393.8200
 Facsimile: 415.393.8306
 Attorneys for Defendant APPLE INC.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
 defendant

v.

APPLE INC.,

Defendant,
 Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF RACHEL S. BRASS IN
 RESPONSE TO EPIC GAMES, INC.'S
 ADMINISTRATIVE MOTION TO SEAL
 PORTIONS OF EX. EXPERT 1**

Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential information, based on my personal experience representing Apple.¹ I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify competently thereto.

2. I submit this declaration in response to Epic’s Administrative Motion to Seal Portions of Ex. Expert 1 (Dkt. 699). Specifically, Apple joins Epic’s Administrative Motion to Seal Portions of Ex. Expert 1.

3. Federal Rule of Civil Procedure 26(c), generally, provides the “good cause” standard for the purposes of sealing documents attached to a dispositive motion or presented at trial. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). The test applied is whether “‘good cause’ exists to protect th[e] information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)).

4. Apple operates in an intensely competitive marketplace. It occupies a unique position as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive, proprietary information in order to gain competitive advantage. As such, Apple takes extensive measures to protect the confidentiality of its proprietary information.

¹ Courts in this District routinely grant motions to seal on the basis of declarations of counsel submitted pursuant to Local Rule 79-5. *See, e.g., In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems this declaration insufficient, Apple respectfully requests that it be permitted to file a further declaration supporting filing under seal.

1 5. The Court has “broad latitude” “to prevent disclosure of materials for many types of
2 information, including, *but not limited to*, trade secrets or other confidential research, development, or
3 commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)
4 (emphasis in original).

5 6. The Court has expressed a desire for these proceedings to be public. To that end, Apple
6 has carefully reviewed Dr. Evans’s opening written direct testimony and proposes two additional
7 redactions beyond those that the Court addressed and granted in Trial Order 4.

8 7. These additional portions of Dr. Evans’s testimony contain non-public financial
9 information of the sort that the Court has already sealed elsewhere in Dr. Evans’s opening testimony.
10 The public disclosure of such information would cause Apple economic harm and put it at competitive
11 disadvantage. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016),
12 *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016) (finding there was a
13 compelling reason for sealing when records contain business information that could be used to harm a
14 litigant’s competitive standing). It would give Apple’s competition confidential information about
15 Apple’s business model and strategy. *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214,
16 1225 (Fed. Cir. 2013) (concluding the district court abused its discretion in denying a motion to seal
17 about “profit, cost, and margin data”).

18 8. The information Apple seeks to protect is foundational to its business, and Apple has
19 exerted great effort and undertaken substantial expense to protect such information. Apple has
20 narrowly tailored its sealing request so as to maximize the public’s access to court proceedings without
21 jeopardizing Apple’s business interests.

22 9. Specifically, as identified below by reference to this paragraph, Apple seeks to seal
23 estimates and calculations made by Dr. Evans using non-public App Store transaction data. Disclosure
24 of this information about the inner workings of the App Store would give Apple’s competitors an unfair
25 insight into Apple’s business model and strategy, putting Apple at a competitive disadvantage.

26 10. I have met and conferred in good faith with counsel for Epic, including by telephone, in
27 an effort to narrow the documents and testimony that the parties propose to maintain under seal. This
28 process has resulted in further narrowing the amount of designated confidential material and

consequently reduced the need for provisional sealing (pursuant to Local Rule 79-5(e)) of material designated by the other party as confidential.

11. Below is a chart detailing the specific items of Apple's that are sealable for the reasons explained herein, highlighted in blue in the attached unredacted version.

Document or Portion of Document Sought to be Sealed	Reason for Redaction / Evidence Offered In Support of Sealing
Evans Opening ¶ 151	Contains non-public financial information that, if disclosed, would put Apple at a competitive disadvantage / Brass Decl. ¶¶ 7-9
Evans Opening Table 4	Contains non-public financial information that, if disclosed, would put Apple at a competitive disadvantage / Brass Decl. ¶¶ 7-9

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on May 24, 2021 at San Francisco, California.

/s/ Rachel S. Brass
Rachel S. Brass